IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8785 of 1992

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not?

3 Whether their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the Civil Judge?

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THE MOTILAL HIRABHAI SPG. & WEAVING MFG. CO. LTD. - Petitioner

Versus

STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR CG SHARMA for Petitioner(s) : 1,
MR SIRAJ GORI, ASSISTANT GOVERNMENT PLEADER for Respondent No.: 1

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 20/02/2006

ORAL JUDGMENT

1. In the present petition, the petitioner has challenged an order dated 12.02.1990 passed by the

competent authority under the Urban Land (Ceiling and Regulations) Act (hereinafter to be referred to as “the said Act” for short). The petitioner has also challenged the order dated 29th October, 1990 passed by the Urban Land Tribunal.

2. The petitioner was holding urban land situated within urban agglomeration of Ahmedabad. Upon introduction of the said Act, the petitioner was required to make declaration under sub-section(1) of Section 6 of the said Act. The declaration made by the petitioner was processed by the competent authority. After one round of remand, the proceedings came to be disposed of by impugned order dated 12.02.1990. By the said order, the competent authority was pleased to declare a total of 8502 Sq.Mts. of land belonging to the petitioner as excess vacant land. The same was ordered to be taken possession from plot No.6 belonging to the petitioner–Company.

2.1 The petitioner preferred an appeal before the Urban Land Tribunal against the order passed by the competent authority. The Urban Land Tribunal by its impugned order dated 29th October, 1990 was pleased to reject the appeal filed by the petitioner. The

petitioner has, therefore, preferred the present petition challenging the said orders.

3. It is the case of the petitioner, as canvassed through Shri Sharma learned Advocate for the petitioner, that the possession of the land declared as excess land was never taken by the State Government before Urban Land (Ceiling and Regulations) Repeal Act (hereinafter to be referred to as “the Repeal Act”, for short) was introduced. It is his case that the respondents have not legally taken possession of the excess vacant land before 30th March, 1990. It is contended that the statement made in the affidavit-in-reply by the State Government to the effect that the possession is already taken over is not supported by any other material and in particular the Panchnama of having taken possession of the land in question. It is contended that in any case possession could not have been taken before proper demarcation and without notice to other interested persons such as tenants and occupiers of other properties which are constructed upon.

3.1 It is additionally contended that even if the possession was taken over by the State Government before the cut-off date i.e. 31st March, 1990, the issues raised

in the present petition do not become infructuous and the petition is required to be entertained on merits and the contentions raised by the petitioner are required to be decided in accordance with law. In support of his contention, reliance was placed on the decision of Division Bench of this Court in the case of ***Rameshchandra Shamjibhai Raniga v. State of Gujarat & Ors. Reported in 2000 (4) GLR 2778***.

3.2 It was further contended that large portion of the land belonging to the petitioner was covered under construction carried out prior to the appointed day. The authorities have ignored this aspect of the matter while calculating the holding of the petitioner and the ceiling limit applicable to the petitioner. It was contended that part of the land held by the petitioner contained a dwelling unit, and such construction occupied a total area of 1457 Sq.Mts. It was contended that such area covered under the construction situated in final plot No.1 ought to have been excluded for the purpose of ascertaining the land holding of the petitioner. It was contended that after deduction of the said area of 1457 Sq.Mts. from the land holding of the petitioner, the petitioner should have been permitted to hold additional 1000 Sq.Mts. of land which is equal to one unit

applicable to Ahmedabad urban agglomeration. Reliance was also placed on the decision of Hon'ble Supreme Court in the case of ***Smt. Meera Gupta V. State of West Bengal reported in AIR 1992 SC 1567*** **in this regard.** It was contended that the decision of the Hon'ble Supreme Court in the case of Smt. Meera Gupta v. State of West Bengal (supra), was not available at the time when the competent authority and the Urban Land Tribunal were deciding the case of the petitioner and therefore, the principles laid down therein have not been applied by the said authorities. However, law declared by the Hon'ble Supreme Court would apply to all pending cases and that therefore, this Court should give benefit to the petitioner as per the declaration of the law made by the Hon'ble Supreme Court in the case of Smt. Meera Gupta v. State of West Bengal(supra).

4. Mr. Siraj Gori, learned Assistant Government Pleader opposed the petition. On the basis of affidavit-in-reply filed by the State Government and on the strength of the original record made available to the Court, he submitted that the possession of the land in question has already been taken over by the State Government by following legal procedure. He submitted that after rejection of the appeal of the petitioner by the Urban Land Tribunal,

Notification under Section 10(1) of the said Act was issued and the same was published in the Government Gazette on 11.04.1991. This was followed by issuance of Notification under section 10(3) of the said Act whereby the excess vacant land was vested in the Government free from all encumbrances. He submitted that notice under Section 10(5) of the said Act was issued on 07.04.1992. Pursuant to the said notice possession of the land in question was already taken over on 30.06.1992. Proceedings under Section 11 of the said Act for payment of compensation was also initiated and by an order dated 11.09.1992, and an amount of Rs. 85,020/- (Rupees Eighty Five Thousand and Twenty only) was offered to the petitioner by way of compensation. He submitted that to these factual averments made in the affidavit-in-reply, the petitioner has not given any rejoinder.

5. It was further contended that the orders passed by the authorities below are just and proper and call for no interference in exercise of powers under Article 227 of Constitution of India. It was contended that the petitioner is not entitled to retain any further land in excess of what was released by the competent authority in its impugned order. It was contended that there was no material on record to establish that there was

construction of dwelling unit occupying 1457 Sq.Mts. on the appointed day, and that too with the permission of the authorities. He therefore, contended that the ratio laid down by the Hon'ble Supreme Court in the case of Smt. Meera Gupata v. State of West Bengal would not apply in the facts of the present case.

6. Having heard the learned Advocates for the parties, it can be seen that to the detailed averments made by the respondents in the affidavit-in-reply concerning the question of the possession of excess land having been taken over before the Repeal Act was brought into effect, the petitioner has not filed any rejoinder. To the factual averments made in affidavit-in-reply, therefore, there is no denial by the petitioner. It is therefore, not possible to entertain the oral submissions made by the learned Advocate for the petitioner that the possession of the land in question was never taken by the Government or that the notice as required under sub-section(5) of Section 10 was not issued. When the government was proceeding to take possession of the excess vacant land, I fail to see any requirement of hearing the tenants or occupants of other constructed land. The petitioner was the main person who was concerned with the government taking possession of the

land in question. Notice was issued to the petitioner and thereafter, the possession of the land was taken over by the competent authority in terms of provisions of the said Act and therefore, the proceedings cannot be declared to have been abated. As laid down by the Division Bench of this Court in the case of Rameshchandra Shamjibhai Raniga v. State of Gujarat & Ors. (supra). The issues arising in this petition however, are required to be decided on merits despite the said Act having been repealed.

7. As noted earlier, the main contention raised on behalf of the petitioner was that the land admeasuring 1457 Sq.Mts. out of the total holding of the petitioner was built upon and contained dwelling unit therein. It is the case of the petitioner that in view of the ratio laid down by Hon'ble Supreme Court in the case of Smt. Meera Gupta v. State of West Bengal (supra), such land should be excluded for reckoning the land holding of the petitioner. After deduction of the said area wrongly included by the competent authority, the petitioner would be entitled to retain one unit or 1000 Sq.Mts. of land.

8. I am afraid such contention can be accepted. The competent authority has observed in its impugned order

that there was no material on record to establish without doubt that such construction was carried out before the appointed day. In any case, it was the finding of the competent authority that such construction was not carried out after approving the plans by the authorities and such construction could have been termed as unauthorized construction. The competent authority in fact observed that the petitioner has not produced any evidence to establish that such construction was prior to approval of the Municipal Corporation or other appropriate authorities and after having building plans approved. It was further observed that upon verification it was found that there were godowns in existence on the said land. However, the petitioner has not mentioned such construction in any of the maps produced before the authority nor has the petitioner included the said area in the reference to land under construction. It was further observed that though in the written reply dated 15.01.1990, the learned Advocate for the petitioner has produced certain receipts of rents received from the transport companies, however, solely on the basis of such receipts, it is not possible to conclude that the payment was made for the same godowns.

9. It can thus be seen that in so far as the question

of total area of 1457 Sq.Mts. of landing having construction thereon prior to appointed day is concerned, the same is not borne out from the material on record. The competent authority found that there is no clinching evidence to establish existence of such construction prior to appointed day. In any case, it was the finding of the competent authority that such construction was not shown to have been carried out with prior permission. In that view of the matter, the competent authority was pleased to take into account the said land as a part of the land holding of the petitioner and include the same for the purpose of calculating the excess vacant land. The Urban Land Tribunal concurred with the view of the competent authority. It was observed that though sufficient opportunity was granted for the learned Advocate for the petitioner, no additional material was produced to contradict the findings of the competent authority. It was observed that no material has been produced to substantiate the plea that there are more dwelling units on the disputed lands than the numbers indicated by the competent authority, which was the main thrust of the argument before the Urban Land Tribunal.

10. Above factual conclusion of the competent authority as upheld by the Urban Land Tribunal, are pure findings

of fact. There is no material on record to convince me that such finding are perverse. No evidence is produced to establish the existence of the construction prior to appointed day. There is no evidence to establish that such construction was commenced and carried out with the permission of the Corporation or any other competent authority after having the building plans approved. In that view of the matter, the contention of the petitioner that such area of land should be excluded from the holding of the petitioner and the petitioner should be allowed to retain additional area of 1000 Sq.Mts of land cannot be accepted. The ratio laid down by the Hon'ble Supreme Court in the case of Smt. Meera Gupta V. State of West Bengal (supra) therefore, would not apply in the facts of the present case.

11. Therefore, even examining the impugned orders on merits, I find that the petitioner has failed to make out any case for interference. The petition is therefore, rejected. Rule is discharged. No order as to costs.

[Akil Kureshi, J.]

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